S VEERASINGAM

v.

KERAJAAN MALAYSIA & ANOR

COURT OF APPEAL, KUALA LUMPUR
ABDUL KADIR SULAIMAN JCA
PAJAN SINGH GILL JCA
RAHMAH HUSSAIN JCA
[CIVIL APPEAL NO: W-01-39-01]
10 JUNE 2004

PUBLIC SERVANTS: *Disciplinary proceedings - Punishment - Plea in mitigation - Whether there is a separate right in law to make plea in mitigation before imposition of punishment - Employee given opportunity to make representations on 'liability' but not in mitigation of penalty - Whether renders decision-making process of disciplinary committee bad - Difference between disciplinary procedures under general order 25 and general order 26 Public Officers (Conduct and Discipline) (Chapter D) General Orders 1980*

PUBLIC SERVANTS: *Termination of service - Retirement from public service in the public interest - Whether amounts to a dismissal - Whether a punishment - Termination of service in the public interest under general order 44 Public Officers (Conduct and Discipline) (Chapter D) General Orders 1980 - Whether distinct and separate from salary-reduction punishment imposed earlier for negligent misconduct - Whether there was double punishment*

ADMINISTRATIVE LAW: *Public servants - Disciplinary proceedings - Plea in mitigation - Whether there is a separate right in law to make plea in mitigation before imposition of punishment - Employee given opportunity to make representations on 'liability' but not in mitigation of penalty - Whether renders decision-making process of disciplinary committee bad - Reduction of salary - Termination of service in the public interest - Whether employee punished twice for one incident of misconduct*

The plaintiff was a railway clerk in the employ of Keretapi Tanah Melayu ('the 1st defendant'). On 18 February 1990, an accident between two trains occurred whilst he was on duty. A committee of inquiry ('the committee') was then set up, and the plaintiff was issued a show-cause letter to which he replied. In the thick of all the ongoing investigations, however, the Public Services Commission ('the PSC'), on 29 October 1990, invited the plaintiff for an interview for the position of station manager. Subsequently, on 13 December 1990, the committee, after holding an inquiry, found the plaintiff responsible

for the said accident and, as a punishment, reduced his salary by three points for two years. The plaintiff appealed against the decision of the committee on 11 January 1991. On 27 February 1991, the PSC formally offered the plaintiff the post of station manager, which he took up on 20 March 1991. On 10 January 1992, however, the PSC, on behalf of the Government of Malaysia ('the 2nd defendant'), terminated the plaintiff's services as station manager with effect from 26 January 1992. On 23 January 1992, the plaintiff's domestic appeal against the decision of the committee was rejected.

Thereafter, on 16 June 1994, the plaintiff commenced an action in the High Court against the defendants, seeking, *inter alia*, declarations that: (C1) the punishment meted out by the committee, *ie*, the reduction of his salary, was *ultra vires* and wrong in law; and (C2) the termination of his services by the PSC was *ultra vires* and wrong in law. In respect of (C1), the plaintiff's principal complaint was that the committee, subsequent to finding him liable for the accident, did not afford him an opportunity to make a plea in mitigation before meting out punishment. The denial of an opportunity to be heard in mitigation, it was contended, had rendered the committee's decision-making process erroneous in law. The plaintiff's other complaint in respect of (C1) was that the punishment was meted out by an authority different from that which issued the charge sheet against him. In respect of (C2), the plaintiff's main grievance was that he was being punished twice for one disciplinary incident, *viz*, reduction in salary and, thereafter, termination of services. The High Court dismissed the plaintiff's action and this was his appeal to the Court of Appeal as against the 2nd defendant.

Held (dismissing the appeal)
Per Rahmah Hussain JCA delivering the judgment of the court:

[1] It is trite "… that in disciplinary proceedings brought against a member of the public service, there is no separate right (or the legitimate expectation of a right) to make representations upon the question of the punishment that ought to be meted out to him". (*Lembaga Tatatertib Perkhidmatan Awam Hospital Besar Pulau Pinang & Anor v. Utra Badi K Perumal* [2001] 2 CLJ 525 FC.) Consequently, there was no failure of justice here when the committee did not give the plaintiff a separate opportunity to make a plea in mitigation before punishing him. The learned judge was right to have so concluded. (pp 344 f-h, 345 a & 347 a-b)

[2] In any event, the punishment meted out by the committee upon the plaintiff was not a 'dismissal' or a 'reduction in rank'. The penalty imposed was a 'reduction of salary' under general order 36(g) of the Public Officers (Conduct and Discipline) (Chapter D) General Orders 1980 ('the 1980 Orders'). The applicable disciplinary procedure here, therefore, was general order 25 of the 1980 Orders and not general order 26 thereof. (pp 345 b-h & 346 a-h)

[3] It was inconsequential that the charge sheet against the plaintiff was issued by a disciplinary officer while the punishment was meted out by the chairman of the 1st defendant's disciplinary board. In any case, this issue was not even pleaded in the plaintiff's statement of claim. The learned judge was, therefore, right to have held the plaintiff strictly by his pleadings. (pp 347 c-g & 348 a-b)

[4] The plaintiff was not being punished twice for one disciplinary incident. The termination of his services as station manager (retirement from public service in the public interest) under general order 44 of the 1980 Orders was an exercise entirely distinct and separate from the salary-reduction punishment imposed on him for being responsible for the train-accident. These were unconnected actions which flowed from different decision-making processes. There was also no punitive element in the 'termination of his services in the public interest'. The termination was not a 'second' punishment for the train-accident; it was not a 'dismissal'. (pp 348 g-h & 349 a-g)

*[**Bahasa Malaysia** Translation Of Headnotes*

Plaintif adalah seorang kerani keretapi yang bekerja dengan Keretapi Tanah Melayu ('defendan pertama'). Pada 18 Februari 1990, semasa plaintif sedang bertugas, satu kemalangan telah berlaku di antara dua buah keretapi. Satu jawatankuasa penyiasat ('jawatankuasa') kemudian telah dilantik dan plaintif telah diberikan surat tunjuk sebab yang mana telah dijawab oleh plaintif. Bagaimanapun, semasa penyiasatan masih berjalan, Suruhanjaya Perkhidmatan Awam ('SPA'), pada 29 Oktober 1990, telah memanggil plaintif untuk temuduga bagi jawatan pengurus stesyen. Berikutnya, pada 13 Disember 1990, jawatankuasa, selepas mengadakan siasatan, mendapati plaintif bertanggungjawab atas kemalangan yang berlaku dan, sebagai hukuman, mengurangkan gajinya sebanyak tiga mata untuk tempoh dua tahun. Pada 11 Januari 1991, plaintif merayu terhadap keputusan jawatankuasa. Pada 27 Februari 1991, SPA dengan rasminya menawarkan jawatan pengurus stesyen kepada plaintif, yang mana telah diterima oleh plaintif pada 20 Mac 1991. Bagaimanapun, pada 10 Januari 1992, SPA, bagi pihak Kerajaan Malaysia ('defendan kedua'), menamatkan

perkhidmatan plaintif sebagai pengurus stesyen berkuatkuasa 26 Januari 1992. Sebelum itu, pada 23 Januari 1992, rayuan domestik plaintif terhadap keputusan jawatankuasa telah ditolak.

Kemudian, pada 16 Jun 1994, plaintif memulakan tindakan di Mahkamah Tinggi terhadap defendan memohon, antara lain, perisytiharan bahawa: (C1) hukuman yang dijatuhkan oleh jawatankuasa, yakni, pengurangan gajinya, adalah ultra vires dan salah di sisi undang-undang; dan (C2) penamatan perkhidmatannya oleh SPA adalah juga *ultra vires* dan salah di sisi undang-undang. Berkaitan (C1), bantahan utama plaintif adalah bahawa jawatankuasa, sesudah mendapatinya bertanggungjawab atas kemalangan, tidak memberinya peluang untuk membuat rayuan meringankan hukuman sebelum menjatuhkan hukuman. Dihujahkan bahawa kegagalan memberi peluang tersebut telah menjadikan proses membuat keputusan jawatankuasa itu silap di sisi undang-undang. Bantahan yang lain plaintif berkaitan (C1) adalah bahawa pihak berkuasa yang menjatuhkan hukuman bukanlah pihak berkuasa yang sama yang mengeluarkan kertas pertuduhan terhadapnya. Berhubung (C2), ketidakpuashatian plaintif adalah kerana beliau dihukum dua kali, iaitu dikurangkan gajinya dan dibuang kerja, atas satu perlakuan disiplin. Tindakan plaintif telah ditolak oleh Mahkamah Tinggi dan ini adalah rayuannya ke Mahkamah Rayuan terhadap defendan kedua.

Diputuskan (menolak rayuan)
Oleh Rahmah Hussain HMR menyampaikan penghakiman mahkamah:

[1] Ianya sudah diterima "... bahawa dalam prosiding disiplin yang dibuat terhadap seorang pegawai awam, tidak wujud hak yang berasingan (ataupun pengharapan sah akan suatu hak) untuk membuat representasi atas persoalan hukuman yang akan dijatuhkan ke atasnya" (*Lembaga Tatatertib Perkhidmatan Awam Hospital Besar Pulau Pinang & Anor v. Utra Badi K Perumal* [2001] 2 CLJ 525 FC). Oleh itu, tidak berlaku kegagalan keadilan di sini apabila jawatankuasa tidak memberikan peluang kepada plaintif untuk membuat rayuan meringankan hukuman sebelum menjatuhkan hukuman. Yang arif hakim betul dalam membuat rumusannya itu.

[2] Apapun, hukuman yang dijatuhkan oleh jawatankuasa terhadap plaintif bukanlah suatu 'pembuangan kerja' atau 'penurunan pangkat'. Penalti yang dikenakan adalah 'pengurangan gaji' di bawah perintah am 36(g) Perintah-Perintah Am Pegawai Awam (Kelakuan dan Tatatertib) (Bab D) 1980 ('Perintah Am 1980'). Prosedur disiplin yang terpakai di sini, oleh itu, adalah perintah am 25 Perintah Am 1980 dan bukan perintah am 26.

[3] Adalah tidak mengapa bahawa kertas pertuduhan terhadap plaintif dikemukakan oleh seorang pegawai disiplin manakala hukuman pula dijatuhkan oleh pengerusi lembaga disiplin iaitu defendan pertama. Isu ini, bagaimanapun, langsung tidak diplid dalam pernyataan tuntutan plaintif. Yang arif hakim dengan itu betul apabila mengikat plaintif dengan ketat kepada plidingnya.

[4] Plaintif tidak dihukum dua kali kerana satu perlakuan disiplin. Penamatan perkhidmatannya sebagai pengurus stesyen (bersara dari perkhidmatan awam kerana kepentingan awam) di bawah perintah am 44 Perintah Am 1980 adalah satu tindakan yang lain dan terasing dari hukuman mengurangkan gaji yang dikenakan ke atasnya kerana bertanggangjawab atas kemalangan keretapi. Kedua-dua tindakan adalah tidak berkaitan dan berpunca dari dua proses membuat keputusan yang berasingan. Juga tidak terdapat elemen hukuman pada 'penamatan perkhidmatannya kerana kepentingan awam'. Penamatan tersebut bukan suatu hukuman 'kedua' bagi kemalangan keretapi; ia bukan suatu 'pembuangan kerja'.

Case(s) referred to:

Balakrishnan v. Ketua Pengarah Perkhidmatan Awam [1981] 2 MLJ 259 ***(refd)***

Ghazi Mohd Sawi v. Mohd Haniff Omar, Ketua Polis Negara, Malaysia & Anor [1994] 2 CLJ 333 SC ***(refd)***

Hngh Ah Leong v. Inspector General of Police & Ors [1995] 2 AMR 1993 ***(dist)***

Lembaga Tatatertib Perkhidmatan Awam, Hospital Besar Pulau Pinang v. Utra Badi K Perumal [2000] 3 CLJ 224 CA ***(refd)***

Lembaga Tatatertib Perkhidmatan Awam, Hospital Besar Pulau Pinang v. Utra Badi K Perumal [2001] 2 CLJ 525 FC ***(refd)***

Said Dharmalingam Abdullah v. Malayan Breweries (Malaya) Sdn Bhd [1997] 1 CLJ 646 SC ***(refd)***

Utra Badi Perumal v. Lembaga Tatatertib Perkhidmatan Awam & Anor [1998] 2 CLJ 306 HC ***(refd)***

Legislation referred to:

Employment Act 1955, s. 14

Federal Constitution, art. 135(2)

Public Officers (Conduct and Discipline) (Chapter D) General Orders 1980, general orders 25, 26, 36(g), 44

For the appellant - Karpal Singh (M Manoharan); M/s Karpal Singh & Co

For the 1st respondent - Azizah Nawawi SFC (Umi Kalthum Abdul Majid SFC)

For the 2nd respondent - Tan Ming-Li (YM Chin, Jennifer Chandran & C Vilasini); M/s Allen & Gledhill

[Appeal from High Court, Kuala Lumpur; Civil Suit No: S2-21-92-94(2)]

Reported by Gan Peng Chiang

JUDGMENT

Rahmah Hussain JCA:

The learned trial judge had, on 9 May 2001, dismissed the appellant's (plaintiff in the High Court) claim with costs, against the first and second respondents (second and third defendants in the court below). However, on 3 October 2001, the appellant's appeal against the second respondent was struck off by another panel of the Court of Appeal. Hence, this appeal before us is only against the first respondent (Kerajaan Malaysia).

Now, the brief facts of this case are these. The appellant was initially employed as a clerical officer by Keretapi Tanah Melayu (KTM), which was later corporatised and became known as Keretapi Tanah Melayu Berhad (KTMB) – the first defendant in the court below.

On 18 February 1990, whilst the appellant was on duty with a porter at the Segambut Railway Station, an accident occurred between two trains. As a result of the accident, an Inquiry Committee was set up to investigate the cause of the accident. On 17 May 1990, a show cause letter was sent to the appellant. He replied to the show cause letter *vide* his letter dated 7 June 1990.

Subsequently an inquiry was held. In the meantime the Public Services Commission (PSC) issued a letter dated 29 October 1990 to the appellant inviting him to attend an interview for the position of Station Manager.

Then on 13 December 1990, the Inquiry Committee informed the appellant that it has made a decision and that the latter was found guilty of the aforesaid accident. Furthermore the appellant was informed that he would be punished by a reduction of salary by three (3) points for a period of two (2) years.

The appellant appealed against the said decision *vide* his letter dated 11 January 1991. However, he was later informed *vide* letter dated 23 January 1992, from Malaysian Railway Administration (third defendant in the court below) that his appeal was dismissed.

In the midst of the aforesaid disciplinary action and appeal, the PSC, vide its letter dated 27 February 1991, made an offer to him for the position of Station Manager, with the condition that he would be on probation for one year prior to confirmation.

The appellant accepted the offer and was thus appointed as a Station Manager from 20 March 1991.

However, on 10 January 1992, the appellant was informed by the Public Services Department (PSD) that the Government of Malaysia has decided to retire him on ground of public interest, as of 26 January 1992. The material part of the letter stated:

> Tuan,
>
> Adalah saya dengan ini memaklumkan bahawa Kerajaan telah memutuskan untuk menamatkan perkhidmatan tuan demi kepentingan awam di bawah Perintah Am 44(1) dan (2), Perintah-Perintah Am Pegawai Awam (Kelakuan dan Tatatertib) (Bab "D") 1980 berkuatkuasa mulai 26.1.1992.

Being dissatisfied with the decision of the PSD, and after much appeals, to various bodies, the appellant (plaintiff) commenced an action on 16 June 1994, initially against KTMB as the first defendant and the Government of Malaysia as the second defendant seeking *inter alia* for a declaration that the disciplinary action and alleged termination was *ultra vires* and wrong in law. Subsequently the appellant (plaintiff) made an application to add the third defendant (Perbadanan Aset Keretapi) as a party to the suit.

The High Court dismissed the appellant's action with costs. Hence this appeal. Before us, the appellant challenged the correctness of the learned judge's decision on twelve grounds. It is to be noted at the outset, that there are two distinct actions taken against the appellant, in this case, namely "disciplinary action" and "termination order".

Now, the first issue raised by the appellant is that, the disciplinary action was erroneous in law and that since he was not given an opportunity to make a plea in mitigation before he was "sentenced" to a reduction of salary by three (3) points, then the decision making process was flawed.

Learned counsel then referred us to the High Court case of *Utra Badi a/l Perumal v. Lembaga Tatatertib Perkhidmatan Awam & Anor* [1998] 2 CLJ 306. In that case the High Court had held that it was unjust to deny a civil servant an opportunity to be heard in mitigation before punishment was imposed on him as the punishment itself involved a further decision making process. The defendant then appealed to the Court of Appeal, which dismissed the appeal. (See *Lembaga Tatatertib Perkhidmatan Awam, Hospital Besar Pulau Pinang v. Utra Badi a/l K Perumal* [2000] 3 CLJ 224). However on further appeal to the Federal Court, after obtaining leave to appeal, the defendant's appeal was allowed. (See *Lembaga Tatatertib Perkhidmatan Awam, Hospital Besar Pulau Pinang v. Utra Badi a/l K Perumal* [2001] 2 CLJ 525).

The Federal Court has made it clear that "there is certainly no separate right to make representations upon the punishment that ought to be meted out to the officer to be dismissed or reduced in rank." The Federal Court also held that "no injustice had been occasioned to the respondent by the failure to hear his mitigation separately."

In addition learned counsel for the appellant referred to the case of *Said Dharmalingam bin Abdullah v. Malayan Breweries (Malaya) Sdn. Bhd.* [1997] 1 CLJ 646, wherein the then Supreme Court held that where an employee was denied the opportunity to make a plea in mitigation before sentencing by a domestic body this amounted to a partial denial of the employee's right to 'due inquiry' under s. 14 of the Act. And by 'due inquiry' for the purpose of s. 14 of the Employment Act 1955 (the Act) the Supreme Court said it "includes the right to make representations against the punishment proposed as a result of adverse findings by a domestic body." An employee should not only have the opportunity to present arguments on 'liability' but also in mitigation of penalty.

In response learned senior federal counsel submitted that the case of *Utra Badi* should not be followed as the requirement of mitigation is only limited to cases involving dismissal or reduction in rank. She then referred us to the case of *Ghazi bin Mohd. Sawi v. Mohd. Haniff bin Omar, Ketua Polis Negara, Malaysia & Anor* [1994] 2 CLJ 333, whereby the then Supreme Court had held that: The respondent had complied with the provisions of GO 23 and GO 26 of the Police Officers (Conduct and Discipline) General Orders (Cap 'D') 1980 ('the 1980 General Orders'). Following the procedure set out in GO 26, the respondent had correctly sent the appellant a show cause letter following closely the provisions of paras 1, 2 and 4. The show cause letter set out the grounds on which it was proposed to dismiss the appellant and invited him to furnish the respondent with a written statement which was accordingly furnished in great detail. Only when the respondent was satisfied that the written representation did not exculpate the appellant did he decide to dismiss him.

Furthermore, learned senior federal counsel said that the right to mitigate was always there and that the cases cited by learned counsel for the appellant were decided before *Utra Badi*'s case.

In our view, the present case is distinguishable from the authorities cited by both parties, in that the penalty to be imposed here is not a dismissal or reduction in rank, but a reduction of salary by three (3) points under GO 36(g). Even though GO 36 provides seven (7) alternative penalties including dismissal and reduction in rank, it is clear from para. 2 of the show cause letter dated

17 May 1990, that reference was made to GO 25 which encompasses procedures for breach of discipline which merits punishment lesser than dismissal or reduction in rank.

For ease of reference GO 25 is reproduced below as follows:

> 25. (1) Where the Chairman of the Appropriate Disciplinary Authority decides under General Order 24 that the breach of discipline alleged merits punishment lesser than dismissal or reduction in rank, the officer shall be informed in writing of the facts of the breach of discipline alleged against him and be given an opportunity of making a representation in writing against the allegation.
>
> (2) After considering the representation under paragraph (1), the Appropriate Disciplinary Authority shall determine whether or not the officer is guilty of the alleged breach of discipline and if it determines that he is guilty thereof it shall impose any one or more of the punishments specified in General Order 36.

Thus when the show cause letter was issued, the Disciplinary Authority must have had in mind any of the punishments under GO 36(a) to (g) but not reduction in rank or dismissal, as in paras (h) and (i), which by virtue of GO 26(1) encompasses a different procedure as provided in GO 26(2) to (11).

General Order 36 is hereby reproduced as follows:

> 36. A Disciplinary Authority may impose on an officer any one or any combination of two or more of the following punishments:
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> (a) warning;
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> (b) reprimand;
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> (c) fine;
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> (d) forfeiture of salary;
>
> (e) stoppage of increment;
>
> (f) deferment of increment;
>
> (g) reduction of salary;
>
> (h) reduction in rank;
>
> (i) dismissal.

Furthermore the decision in *Utra Badi*'s case related to the application of GO 23 and art. 135(2) of the Federal Constitution. Even under such circumstances, the Federal Court held that "there is certainly no separate right to make representations upon the punishment that ought to be meted out to the officer to be dismissed or reduced in rank."

In the circumstances, we are satisfied that the learned trial judge was right in his finding on this issue.

The next issue to be considered is whether the decision making process was flawed because the charge sheet was issued by the disciplinary officer, whereas the subsequent punishment was meted out by the Chairman of KTM Head Office Disciplinary Board for group 'C' officers. On this issue this is what the learned judge has to say:

> The 2nd defendant's response to this was to point out that this issue was not pleaded in the statement of claim; whereas in *Hngh* this issue was specifically pleaded. It is a cardinal rule of pleadings that parties are bound by their pleadings and ought not to be allowed to veer from their pleadings unless an application to amend had been made and allowed. In this case since the plaintiff had relied on *Hngh* as authority in support of the issue raised, the plaintiff ought to have at least applied to amend the statement of claim. Since this was not done, I have to rule that this issue is outside the pleaded case of the plaintiff and therefore a matter that this Court will not consider.

With due respect we are in total agreement with the learned judge's ruling. However, as the appellant had relied heavily on the case of *Hngh Ah Leong v. Inspector General of Police & 2 Ors.* [1995] 2 AMR 1993, we are of the view that it needs to be distinguished from the present case. In that case which was under GO 26, the Inspector General of Police had made a *prima facie* finding based on the documents in his possession that there is a case, with a view to dismissal or reduction in rank, for the plaintiff to answer, which if unrebutted would warrant the given punishments. Whereas in our case the show cause letter was issued pursuant to GO 25(1) wherein the plaintiff was informed of the facts of the breach of discipline alleged against him and was given an opportunity of making a representation in writing, against the allegation. GO 25(2) provides that after considering the representation, the Authority shall determine whether or not the officer is guilty of the alleged breach of discipline and if it determines that he is guilty thereof, it shall impose any or more of the punishments specified in GO 36.

Therefore unlike GO 26. there is no pre-set "mental state of mind" of the Authority issuing the show cause letter that the appellant is already guilty of the disciplinary charges. The finding of guilt is only done by the Authority in sub-para. (2) after considering the representation of the appellant. In other words, unlike *Hngh Ah Leong'*s case, the Authority issuing the letter still has an "open mind" as to the guilt of the appellant. The finding of guilt is only made after considering the representation of the appellant.

Thus for the abovesaid reasons, we are satisfied that the principle of Hngh Ah Leong is inapplicable in the present case.

Turning now to the issue that, since the PSC had offered the appellant the post of Station Manager and KTM had also made the same offer which had been accepted by the appellant, both the PSC and KTM had by their actions created a binding agreement which could not be arbitrarily revoked, this is what the learned judge has to say:

> From the evidence of DW1, the plaintiff has not been confirmed in his post as station manager because he is only eligible to be considered for confirmation one year after, that is, after 20.3.92. Before his eligibility date, his services were terminated with effect from 26.1.92. Therefore, since he had not been confirmed in the post of station manager he had to revert back to his earlier post of "Pegawai Kerani Biasa".

Thus to us, the issue raised is a non-issue. There is no question that the contract of the post of Station Manager existed between the parties. An important clause in the offer letter (cl. 2(d)) specified that before the appellant can be considered to be confirmed in the post of Station Manager, he must have served in that post for at least one (1) year and since in this case his services were terminated before his eligibility date, therefore he has not been confirmed in the post of Station Manager and has to revert to his earlier post of "Pegawai Kerani Biasa".

As to whether the appellant was punished twice, once by KTM which had imposed punishment by reducing his salary by three points for a period of two years and again by the Government represented by the PSD, terminating his services by way of the letter dated 10 January 1992, the learned trial judge came to the correct conclusion when he said:

> In the present case there is no punitive element, as the plaintiff has not been denied his pension. He has been pensioned off on the basis of public interest pursuant to GO 44(1) and (2). Since the termination is a distinct and separate action, I hold that the plaintiff has not been punished twice for the same offence.

The Federal Court had clearly stated in the case of *Balakrishnan v. Ketua Pengarah Perkhidmatan Awam* [1981] 2 MLJ 259, that a termination order under GO 44 is a distinct and separate matter altogether. At p. 262 of the judgment the Federal Court said:

> ... GO 44 comes under Part IV of the GO under the heading 'Miscellaneous' and opens with the significant non obstante clause 'Notwithstanding these General Orders, ...,' thus making it quite separate and distinct from the preceding three Parts of the GO dealing with conduct, disciplinary procedure and general provisions pertaining to disciplinary punishments. GO 44 goes therefore beyond and is additional to what precedes it ...

Furthermore, Abdoolcader J (as he then was) had said in the same judgment as follows (at p. 263):

> There is no punitive element involved either in the termination of the appellant's service in the public interest. He has not been denied a pension and indeed the indication is that he will indeed be paid a pension once his pension factor is determined.

Thus in the present case since the disciplinary action relates to the accident only whereas the termination order relates to the "... condition of service, the usefulness of the officer thereto, the work and conduct of the officer and all the other circumstances of the case" (GO 44(2), we are in total agreement with the learned judge's finding that the appellant has not been punished twice. Further the letter of termination dated 10 January 1992 has specified that the plaintiff has been terminated from service pursuant to GO 44(1) and (2).

On a final note, that is, learned counsel for the appellant's submission that since the charge sheet of 17 May 1990, stood infructuous after the expiry of the one month, based on the "Panduan Penyelenggaraan Tatatertib 1980" (Panduan), we agree with the learned judge when he said:

> I accept the 2nd defendant's submission on this that the Panduan is only a guide and that it does not have the effect of law. Further there is no mandatory requirement for it to be applied strictly.

For the reasons already given, we would dismiss the appeal with costs. The deposit will be paid to the respondent to account of its taxed costs.

My learned brothers, Abdul Kadir Sulaiman and Pajan Singh Gill, JJCA, have had an opportunity of reading this judgment in draft and have expressed their concurrence with it.